

PCA FILE

Leg / Salt
Sen Gore / Sen Bingman

22 August 1989
OCA 2991-89

MEMORANDUM FOR: Chief, Arms Control Intelligence Staff
Chief, Missile Proliferation Branch, OSWR

FROM:

Legislation Division
Office of Congressional Affairs

STAT

SUBJECT: H.R. 2461, S. 1227 and S. 1421 - Missile
Technology Control Regime Sanctions

1. Attached for your attention are copies of S. 1421, S. 1227 and an amendment to The Defense Authorization Act, which provide for the imposition of sanctions in order to restrict the proliferation of missile and missile technology. All three require extensive reporting to Congress. The amendment to H.R. 2461, the Defense Authorization Act, was introduced and approved by the House on 25 July 1989. S. 1421, which was introduced by Senator Gore on 27 July 1989; and S. 1227, which was introduced by Senator Bingaman on 22 June 1989, are still pending.

2. The amendment to H.R. 2461 requires the President to impose sanctions against United States persons or foreign persons who are involved in trade in violation of the Missile Technology Control Regime (MTCR). The sanctions would be to deny all export licenses and/or to prohibit United States Government procurement contracts. The amendment also requires the President to impose sanctions against a developing country that imports MTCR items or equips its forces with missile systems. Those sanctions would be to deny or reduce certain technical assistance and/or to deny exports of certain technologies.

3. S. 1421 is basically the same as the above mentioned House version; however, S. 1421 adds the option of an import ban sanction against foreign companies.

OCA 2991-89

SUBJECT: H.R. 2461, S. 1227, and s. 1421 - Missile Technology
Control Regime Sanctions

4. S. 1227 requires the President to impose sanctions against domestic or foreign firms that transfer MTCR equipment and technology in violation of the MTCR guidelines. It also prohibits, without a validated export license from the Department of Commerce, the export of missile equipment and technology not on the United States Munitions List. Such a license will be denied if the exporter or recipient has previously transferred such articles in violation of MTCR guidelines, if the recipient is developing offensive weapons for export to MTCR non-adherents, or if the recipient is a country supporting terrorism.

5. Should you have any concerns about the impact these legislative actions would have on Agency equities, I would appreciate your comments by 30 August 1989.




STAT

Attachments

OCA/LEG.  (22 Aug 89)

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STAT

Report for S. 1421 Gore-McCain Missile and Proliferation Control Act
As introduced in the Senate
Complete text of this version

101st CONGRESS
1st Session

S. 1421

To provide for the imposition of sanctions on persons who export, transfer, or otherwise engage in the trade of certain items in violation of laws and regulations implementing the Military Technology Control Regime.

IN THE SENATE OF THE UNITED STATES

July 27 (legislative day, January 3), 1989

Mr. Gore (for himself and Mr. McCain) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations.

A BILL

To provide for the imposition of sanctions on persons who export, transfer, or otherwise engage in the trade of certain items in violation of laws and regulations implementing the Military Technology Control Regime.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gore-McCain Missile and Proliferation Control Act".

SEC. 2. POLICY.

(a) In General.--It should be the policy of the United States to take all appropriate measures--

(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary and intended to produce or acquire missiles that can deliver weapons of mass destruction;

(2) to discourage Communist-bloc countries from aiding and abetting any states from acquiring such weapons, material and technology;

(3) to strengthen the Missile Technology Control Regime and other

HURT STATE

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aspects of the United States control regime to prohibit the flow of United States materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology;

(4) to discourage private companies in non-Communist countries from aiding and abetting any states in acquiring such material and technology; and

(5) to monitor closely the development, sale, acquisition, and deployment of missiles, destabilizing offensive aircraft, and other weapons delivery systems which can be used to deliver weapons of mass destruction, and to make every effort to discourage such activity when such delivery systems seem likely to be used for such purposes.

(b) Multilateral Diplomacy.--The United States should seek to pursue the policy described in subsection (a) to the extent practicable and effective through multilateral diplomacy.

(c) Unilateral Actions.--The United States retains the right to and should take unilateral actions to pursue the objectives in subsection (a) until such multilateral efforts prove effective and, at that time, to support and enhance the multilateral efforts.

SEC. 3. ENFORCEMENT OF MISSILE TECHNOLOGY CONTROL REGIME.

(a) Determination by the President.--Whenever there is reliable evidence, as determined by the President--

(1) that a United States person--

(A) is exporting, transferring, or otherwise engaged in the trade of any MTCR item in violation of the provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) or section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404 or 2405), or any regulations issued under any such provisions,

(B) is conspiring to or attempting to engage in such export, transfer, or trade, or

(C) is knowingly facilitating such export, transfer, or trade by any other person, or

(2) that a foreign person--

(A) is exporting, transferring, or otherwise engaged in the trade of any MTCR item for which an export license would be denied if such export, transfer, or trade were subject to those provisions of law and regulations referred to in paragraph (1)(A),

(B) is conspiring to or attempting to engage in such export, transfer, or trade, or

(C) is knowingly facilitating such export, transfer, or trade by any other person, or

(3) that a less developed state or entity--

(A) is importing MTCR items or long-range missile systems for the delivery of weapons of mass destruction, or

(B) is equipping its forces with new or additional missile systems or other weapons delivery systems configured to use weapons of mass destruction,

then, subject to subsection (c), the President shall impose not less than one of the applicable sanctions described in subsection (b).

(b) Sanctions.--

(1) The sanctions which apply to a United States person under subsection (a) are the following:

(A) Denying such United States person all export licenses under

section 38 of the Arms Export Control Act (22 U.S.C. 2778) and sections 5 and 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404 and 2405).

(B) Prohibiting all contracting with, or procurement of any products and services from, such United States person by any department, agency, or instrumentality of the United States Government.

(C) In a case in which the President determines that the violation under subsection (a) is an initial violation and is nondestabilizing, the sanctions described in subparagraphs (A) and (B) shall apply, but only with respect to MTCR items.

(2) The sanctions which apply to a foreign person under subsection (a) are the following:

(A) Denying the issuance of any export license under section 38 of the Arms Export Control Act (22 U.S.C. 2778) or section 5 or section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405) if such foreign person is the designated consignee or end-user in the application for such export license or if the President has reason to believe that such foreign person will benefit from the issuance of such export license.

(B) Prohibiting all contracting with, or procurement of any products and services from, such foreign person by any department, agency, or instrumentality of the United States Government.

(C) Prohibiting the importation into the United States of any product or service of such foreign person.

(D) In a case in which the President determines that the violation under subsection (a) is an initial violation and is nondestabilizing, the sanctions described in subparagraphs (A) and (B) shall apply, but only with respect to MTCR items.

(3) The President shall take appropriate steps to dissuade less developed states or entities from developing and deploying destabilizing offensive missiles. Whenever the President determines that such missiles can be used by a non-MTCR country to deliver weapons of mass destruction, one or more of the following sanctions shall be applied to a state or entity under subsection (a):

(A) Denying or reducing all technical assistance relative to, and denying transfer of all or selected technology in, aviation, electronics, missiles, or space systems or equipment under the control of the United States Government.

(B) Prohibiting the importation into the United States of all or selected items of aviation, electronic, missile, or space systems or equipment.

(4) Sanctions shall be imposed under this section for a period of not less than 2 years and not more than 5 years.

(c) Waiver.--The President may waive the imposition of sanctions on a person under subsection (a) with respect to a product or service if the President certifies to the Congress that--

(1) the product or service is essential to the national security of the United States;

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments; and

(3) the end-user of such product or service is the United States Government.

(d) Inapplicability to Foreign Persons Licensed by an MTCR Country.--If a foreign person has been issued an export license by the government of an MTCR country under any provision of law of such country similar to a provision of law or regulations referred to in subsection (a)(1)(A) and such foreign person is a national of such country or, in the case of a business entity, is established pursuant to the laws of such country, subsection (a) does not apply with respect to any exporting, transferring, or other trading activity covered by such export license.

(e) Effective Date.--The provisions of this section shall take effect 6 months after the date of enactment of this Act.

SEC. 4. REPORTS ON THE PROLIFERATION OF LONG-RANGE MISSILE AND DESTABILIZING OFFENSIVE AIRCRAFT.

(a) Reports.--Not later than 90 days after the date of enactment of this subsection, and every 180 days thereafter, the President shall submit to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader and Minority Leader of the Senate, the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives and the Select Committee on Intelligence, the Committee on Foreign Relations, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report described in subsection (b).

(b) Contents of Report.--(1) Each report referred to in subsection (a) shall detail the efforts of all foreign countries to acquire long-range missiles and destabilizing offensive aircraft, and to acquire the material and technology to produce and deliver such weapons, together with an assessment of the present and future capability of those countries to produce and deliver such weapons.

(2) Each report under this section shall include an assessment of whether and to what degree any Communist-bloc country has aided or abetted any foreign country in its efforts to acquire weapons systems, material, and technology described in paragraph (1).

(3) Each such report shall also list--

(A) each company which in the past has aided or abetted any foreign country in those efforts; and

(B) each company which continues to aid and abet any foreign country in those efforts, as of the date of the report.

(4) Such report shall also include an assessment as to whether any company listed in paragraph (3)(A) or (3)(B) is aware that the assistance provided was for the purpose of developing a long-range missile or offensive aircraft.

(5) Each report under this subsection shall provide any confirmed or credible intelligence or other information that any non-Communist country has aided or abetted any foreign country in those efforts, either directly or by selling such missiles or aircraft or by facilitating the activities of the companies listed in paragraph (3)(A) or (3)(B), but took no action to halt or discourage such activities.

(c) Interpretation.--Nothing in this section--

(1) requires the disclosure of information in violation of Senate Resolution 400 of the Ninety-fourth Congress or otherwise alters, modifies, or supersedes any of the authorities contained therein; or

(2) shall be construed as requiring the President to disclose any information which, in his judgment, would seriously--

(A) jeopardizes the national security of the United States;

(B) undermine existing and effective efforts to meet the policy objectives outline in section 2; and

(c) compromise sensitive intelligence operations, with resulting grave damage to the national security of the United States.

(d) Excluded Information.--If the President, consistent with subsection (c)(2), decides not to list any company or countries in that part of the report required under paragraphs (3) and (5) of subsection (b) which would have been listed otherwise, the President shall include that fact in that report, and his reasons therefor.

SEC. 5. REVIEW BY THE SECRETARY OF STATE OF CERTAIN LICENSE APPLICATIONS.

Section 6(a)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(a)(5)) is amended by adding at the end thereof the following: "The Secretary shall refer all license applications for the export of missile equipment and technology that is not contained on the United States Munitions List to the Secretary of State for review by the Secretary of State, in consultation with the Secretary of Defense."

SEC. 6. DEFINITIONS.

For purposes of this Act--

(1) the term "United States person" means "United States person" as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2));

(2) the term "foreign person" means any person other than a United States person;

(3) the term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and includes the singular and plural of such natural persons and entities, and any successors of such entities;

(4) in the case of Communist-bloc countries, where it may be impossible to identify a specific governmental entity, "person" shall mean all activities of that government relating to the development or production of any technology affected by the Missile Technology Control Regime, plus all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment;

(5) the term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end-user of the item to be exported or transferred;

(6) the term "MTCR item" means any item listed in the Equipment and Technology Annex of the Missile Technology Control Regime which was adopted by the governments of Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom, and the United States on April 7, 1987, and in accordance with which the United States Government agreed to act beginning on April 16, 1987; and

(7) the term "less developed states" does not include any member of the political organs of NATO, any member of the Warsaw Treaty Organization, Austria, Australia, Israel, Japan, New Zealand, or Switzerland.

SEC. 7. REGULATORY AUTHORITY.

The President may issue such regulations, licenses, and orders as are necessary to carry out this Act.

101ST CONGRESS
1ST SESSION

S. 1227

To amend the Arms Export Control Act and the Export Administration Act of 1979 to restrict proliferation of missiles and missile equipment and technology.

IN THE SENATE OF THE UNITED STATES

JUNE 22 (legislative day, JANUARY 3), 1989

Mr. BINGAMAN (for himself, Mr. MITCHELL, Mr. GLENN, Mr. PELL, Mr. NUNN, Mr. MCCAIN, Mr. BRADLEY, Mr. DECONCINI, Mr. LIEBERMAN, Mr. CONRAD, Mr. LUGAR, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To amend the Arms Export Control Act and the Export Administration Act of 1979 to restrict proliferation of missiles and missile equipment and technology.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Missile Control Act of
5 1989".

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) the global spread of weapons of mass destruc-
9 tion, accompanied by the proliferation of sophisticated

1 missile delivery systems and missile technology, poses
2 a serious threat to stability and peace in many regions;

3 (2) the Missile Technology Control Regime
4 (MTCR) was established in 1987 to restrict such
5 proliferation;

6 (3) notwithstanding the existence of the MTCR,
7 companies situated in countries which are adherents to
8 the MTCR have transferred, in violation of the princi-
9 ples of that agreement, missile equipment and technol-
10 ogy to nonadherents;

11 (4) the MTCR is further weakened as it does not
12 include the Soviet Union, China, Argentina, North
13 Korea, Brazil, and certain Soviet-bloc countries, which
14 have transferred missiles and missile technology to
15 countries without this capability;

16 (5) missile proliferation could be better controlled
17 if MTCR adherents shared a common interpretation
18 of the MTCR principles and strictly enforced its
19 provisions;

20 (6) the spread of intermediate range missiles can
21 be effectively restricted only if all countries involved in
22 the transfer of such missiles and technology agree to
23 restrict such transfers;

24 (7) coordination and cooperation between the
25 agencies charged with responsibility for carrying out

1 United States policy on missile control is inadequate;
2 and

3 (8) greater consultation between the President and
4 the Congress is needed to ensure that Congress is
5 being kept fully informed about missile proliferation
6 and development, and ongoing diplomacy to halt mis-
7 sile proliferation.

8 SEC. 3. PURPOSE.

9 It is the purpose of this Act—

10 (1) to restrict the transfer and development of
11 missiles and missile equipment and technology;

12 (2) to encourage greater international participation
13 in and adherence to the Missile Technology Control
14 Regime (MTCR) of 1987;

15 (3) to seek bilateral and multilateral agreements
16 similar to the MTCR;

17 (4) to encourage countries without missiles to
18 forego the development or acquisition of these weap-
19 ons; and

20 (5) to mandate procedures which would permit the
21 United States to take the lead in restricting the spread
22 of missiles and missile equipment and technology by re-
23 quiring stricter enforcement procedures and improved
24 cooperation among the responsible agencies.

1 SEC. 4. AMENDMENT TO THE ARMS EXPORT CONTROL ACT.

2 The Arms Export Control Act is amended by inserting
3 after chapter 6 (22 U.S.C. 2795b. et seq.) the following new
4 chapter:

5 **"CHAPTER 7—CONTROL OF MISSILES AND**
6 **MISSILE EQUIPMENT AND TECHNOLOGY.**

7 "SEC. 71. POLICY.—It is the policy of the United
8 States to improve the control and reduce the proliferation of
9 missiles and missile equipment and technology by taking all
10 appropriate measures—

11 "(1) to improve enforcement and seek a common
12 and broader interpretation among Missile Technolo-
13 gy Control Regime (MTCR) members of MTCR
14 principles;

15 "(2) to extend MTCR membership to nonadher-
16 ents and to explore with other nonadherents which
17 export missiles and missile equipment and technology
18 the negotiation of bilateral and multilateral agreements
19 which would support the principles of the MTCR or, at
20 a minimum, not undercut the MTCR;

21 "(3) to consider the organization of an internation-
22 al conference to review measures which would reduce
23 the proliferation of missiles and missile equipment and
24 technology;

1 “(4) to consider an international treaty which pro-
2 hibits the global spread of missiles that are subject to
3 MTCR guidelines; and

4 “(5) to seek through diplomatic efforts peaceful
5 resolution of regional differences, thereby reducing the
6 perceived need for missile forces.

7 “SEC. 72. DENIAL OF THE TRANSFER OF MISSILE
8 EQUIPMENT AND TECHNOLOGY.—(a) Except as provided in
9 subsection (b), the following shall apply:

10 “(1) If the President determines, after consulta-
11 tion with the Secretary of State and the Secretary of
12 Defense, that a domestic firm has transferred, in viola-
13 tion of the MTCR guidelines, after the date of enact-
14 ment of this Act—

15 “(A) missile equipment and technology (other
16 than MTCR category I), then the Secretary of
17 State and the Secretary of Defense shall deny, for
18 a period of two years, government contracts relat-
19 ing to missile equipment and technology and
20 export licenses for any transfer of missile equip-
21 ment and technology to such firm; and

22 “(B) MTCR category I missile equipment
23 and technology, then the Secretary of State and
24 the Secretary of Defense shall deny, for a period
25 of five years, government contracts relating to

1 missile equipment and technology and export li-
2 censes for any transfer of missile equipment and
3 technology to such firm.

4 “(2) If the President determines, after consulta-
5 tion with the Secretary of State and the Secretary of
6 Defense, that a foreign firm or state entity, in violation
7 of the MTCR guidelines, has transferred, after the date
8 of enactment of this Act—

9 “(A) missile equipment and technology (other
10 than MTCR category I), then the Secretary of
11 State and the Secretary of Defense shall deny, for
12 a period of two years, government contracts relat-
13 ing to missile equipment and technology and
14 export licenses for any transfer of missile equip-
15 ment and technology to that foreign firm or State
16 entity; and

17 “(B) MTCR category I missile equipment
18 and technology, then the Secretary of State and
19 the Secretary of Defense shall deny, for a period
20 of five years, government contracts relating to
21 missile equipment and technology and export li-
22 censes for any transfer of missile equipment and
23 technology to that foreign firm or State entity.

24 “(b) The prohibitions contained in subsection (a) shall
25 not apply if the President, after consultation with the Secre-

1 tary of State and the Secretary of Defense, determines and so
2 certifies to Congress that the export license or government
3 contract would not be inconsistent with the purpose of the
4 Missile Control Act of 1989.

5 "SEC. 73. ANNUAL REPORT ON MISSILE CONTROL.—

6 (a) CONTENTS OF REPORT.—Not later than February 1 of
7 each year, the Secretary of State shall submit to the Con-
8 gress a report on transfers of missile equipment and technolo-
9 gy to MTCR nonadherents that shall include—

10 "(1) the status of missile development programs,
11 as defined in the MTCR, of all nonadherents, except
12 the Soviet Union, which have transferred or sold to
13 other countries, or are developing, missile systems and,
14 in the case of the Soviet Union, a description of all
15 missile exports, as defined in the MTCR, to other non-
16 adherents;

17 "(2) a description of the assistance provided by in-
18 dividual Communist-bloc countries and non-Communist
19 countries and companies, including MTCR adherents,
20 to MTCR nonadherents in the development of missile
21 systems, as defined in the MTCR;

22 "(3) the number, on a country-by-country basis, of
23 validated export licenses, technical assistance agree-
24 ments, manufacturing licensing agreements, and letters
25 of offer and acceptance approved for the transfer of

1 missile equipment and technology to MTCR non-
2 adherents;

3 “(4) a description specifying the type of equip-
4 ment, the end-user, and the purpose for which it will
5 be used, of missile equipment and technology-transfers
6 to MTCR nonadherents which require assurances from
7 the recipient; and

8 “(5) a description of diplomatic measures that the
9 United States has taken or that other MTCR members
10 have made to the United States with respect to activi-
11 ties of private firms and countries suspected of violat-
12 ing the MTCR.

13 “(b) TYPE OF REPORT.—The President shall make
14 every effort to submit all of the information required by sub-
15 section (a) in unclassified form. Whenever the President sub-
16 mits any such information in classified form, he shall submit
17 such classified information in an addendum and shall also
18 submit simultaneously a detailed summary, in unclassified
19 form, of such classified information.

20 “(c) CONSTRUCTION.—Nothing in this section—

21 “(1) requires the disclosure of information in vio-
22 lation of Senate Resolution 400 of the Ninety-fourth
23 Congress or otherwise alters, modifies, or supersedes
24 any of the authorities contained therein; or

1 “(2) shall be construed as requiring the President
2 to disclose any information which, in his judgment,
3 would seriously—

4 “(A) jeopardize the national security of the
5 United States;

6 “(B) undermine existing and effective efforts
7 to meet the policy objectives outlined in section
8 71 of this Act; or

9 “(C) compromise sensitive intelligence oper-
10 ations, with resulting grave damage to the nation-
11 al security interests of the United States.

12 “SEC. 74. DEFINITIONS.—For purposes of this
13 chapter—

14 “(1) the term ‘Missile Technology Control
15 Regime’ or ‘MTCR’ means the agreement, as amend-
16 ed, between the United States, the United Kingdom,
17 the Federal Republic of Germany, France, Italy,
18 Canada, and Japan, announced on April 16, 1987, to
19 restrict sensitive missile-relevant transfers based on an
20 annex of missile equipment and technology; and

21 “(2) the terms ‘missile’ and ‘missile equipment
22 and technology’ mean those items listed in the MTCR
23 Equipment and Technology Annex, as amended.”.

1 SEC. 5. AMENDMENTS TO THE EXPORT ADMINISTRATION ACT
2 OF 1979.

3 (a) REVIEW OF MTCR LICENSE APPLICATIONS.—Sec-
4 tion 6(a)(5) of the Export Administration Act of 1979 (50
5 U.S.C. App. 2405(a)(5)) is amended—

6 (1) by inserting “(A)” immediately after “(5)”;
7 and

8 (2) by adding at the end thereof the following:

9 “(B)(i) The Secretary shall direct the Office
10 of Export Licensing to refer all license applica-
11 tions for the export of items on the MTCR annex,
12 excluding those directed to MTCR adherents and
13 those that deal with NATO programs of coopera-
14 tion, to the Secretary of State and, if so request-
15 ed, to the Secretary of Defense.

16 “(ii) The Secretary shall, in consultation with
17 the Secretary of State and the Secretary of De-
18 fense, establish a procedure that would permit the
19 Secretary of State and the Secretary of Defense
20 to have access to the Office of Export Licensing’s
21 computer lists of license applications for missile
22 equipment and technology.”.

23 (b) EXPORT LICENSING OF CERTAIN MISSILE EQUIP-
24 MENT AND TECHNOLOGY.—Section 6 of the Export Admin-
25 istration Act of 1979 (50 U.S.C. App. 2405) is amended—

1 (1) by redesignating subsections (k) through (p) as
2 subsections (l) through (q), respectively; and

3 (2) by inserting after subsection (j) the following:

4 “(k) CONTROLS ON EXPORTS OF MISSILE EQUIPMENT
5 AND TECHNOLOGY.—

6 “(1) IN GENERAL.—Missile equipment and tech-
7 nology, other than missile equipment and technology
8 on the United States Munitions List, may be exported
9 from the United States only pursuant to a validated
10 export license.

11 “(2) DENIAL REQUIRED.—After enactment of this
12 subsection, the Secretary shall not issue an export li-
13 cense for missile equipment and technology to which
14 this subsection applies—

15 “(A) if the proposed exporter or recipient of
16 the export has transferred, after the date of enact-
17 ment of this subsection, and within the 2-year
18 period preceding the application for the license,
19 missile equipment and technology in violation of
20 the MTCR guidelines;

21 “(B) if the proposed recipient of the transfer
22 is a facility of a MTCR nonadherent that is de-
23 signed to develop offensive missiles (as defined in
24 the MTCR) for export to MTCR nonadherents; or

1 “(C) if the proposed recipient or end-user is
2 located in a country which the Secretary of State
3 has determined, for purposes of subsection (j) of
4 this section, has repeatedly provided support for
5 acts of international terrorism.

6 “(3) EXCEPTIONS.—Notwithstanding paragraph
7 (2), the Secretary may issue a license for an export of
8 missile equipment and technology to which this subsec-
9 tion applies if, after consultation with the Secretary of
10 Defense, the Secretary determines and so certifies to
11 the Congress that the issuance of the export license
12 would not be inconsistent with the purpose of the Mis-
13 sile Control Act of 1989.”.

14 (c) REPORT.—Section 14 of the Export Administration
15 Act of 1979 (50 U.S.C. App. 2413) is amended—

16 (1) by striking the section heading and inserting in
17 lieu thereof “**REPORTS**”;

18 (2) in subsection (a), by striking “**CONTENTS**” and
19 inserting “**ANNUAL REPORTS**”; and

20 (3) by adding at the end thereof the following:

21 “(g) **REPORTS ON CONTROLS OF MISSILE EQUIPMENT**
22 **AND TECHNOLOGY.**—Not later than February 1 of each
23 year, the Secretary shall submit to the Congress a report
24 setting forth with respect to the preceding calendar year—

1 “(1) the number, on a country-by-country basis, of
2 requests for validated export licenses approved for mis-
3 sile equipment and technology to non-MTCR countries;

4 “(2) a description, specifying the type of equip-
5 ment, the end-user, and the purposes for which it will
6 be used of export licenses approved for missile equip-
7 ment and technology to MTCR nonadherents that re-
8 quired assurances from the recipient; and

9 “(3) the number, on a country-by-country basis,
10 and description of requests or applications for missile
11 equipment and technology export licenses that were re-
12 ferred to the Department of State and the Department
13 of Defense.”.

14 (d) DEFINITIONS.—Section 16 of the Export Adminis-
15 tration Act of 1979 (50 U.S.C. App. 2415) is amended—

16 (1) by redesignating paragraphs (7) and (8) as
17 paragraphs (8) and (9), respectively; and

18 (2) by inserting after paragraph (6) the following:

19 “(7) the terms ‘MTCR’, ‘Missile Technology Con-
20 trol Regime’, and ‘missile equipment and technology’
21 have the same meanings as in section 74 of the Arms
22 Export Control Act;”.

H 4244

CONGRESSIONAL RECORD — HOUSE

July 25, 1989

able supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments; and

(3) the end-user of such product or service is the United States Government.

(d) **INAPPLICABILITY TO FOREIGN PERSONS LICENSED BY AN MTCR COUNTRY.**—If a foreign person has been issued an export license by the government of an MTCR country under any provision of law of such country similar to a provision of law or regulations referred to in subsection (a)(1)(A) and such foreign person is a national of such country or, in the case of a business entity, is established pursuant to the laws of such country, subsection (a) does not apply with respect to any exporting, transferring, or other trading activity covered by such export license.

SEC. 1243. REPORTS ON THE PROLIFERATION OF LONG-RANGE MISSILE AND DESTABILIZING OFFENSIVE AIRCRAFT.

(a) **REPORTS.**—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the Majority Leader and Minority Leader of the Senate, the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives and the Select Committee on Intelligence, the Committee on Foreign Relations, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report described in subsection (b).

(b) **CONTENTS OF REPORT.**—(1) Each report referred to in subsection (a) shall detail the efforts of all foreign countries to acquire long-range missiles and destabilizing offensive aircraft, and to acquire the material and technology to produce and deliver such weapons, together with an assessment of the present and future capability of those countries to produce and deliver such weapons.

(2) Each report under this section shall include an assessment of whether and to what degree any communist-bloc country has aided or abetted any foreign country in its efforts to acquire weapons systems, material, and technology described in paragraph (1).

(3) Each such report shall also list—

(A) each company which in the past has aided or abetted any foreign country in those efforts; and

(B) each company which continues to aid and abet any foreign country in those efforts, as of the date of the report.

(4) Such report shall also include an assessment as to whether any company listed in paragraph (3)(A) or (3)(B) aware that the assistance provided was for the purpose of developing a long-range missile or offensive aircraft.

(5) Each report under this section shall provide any confirmed or credible intelligence or other information that any non-Communist country has aided or abetted any foreign country in those efforts, either directly or by selling such missiles or aircraft or by facilitating the activities of the companies listed in paragraph (3)(A) or (3)(B), but took no action to halt or discourage such activities.

(c) **INTERPRETATION.**—Nothing in this section—

(1) requires the disclosure of information in violation of Senate Resolution 400 of the Ninety-fourth Congress or otherwise alters, modifies, or supersedes any of the authorities contained in that resolution; or

(2) shall be construed as requiring the President to disclose any information which, in his judgment, would seriously—

(A) jeopardizes the national security of the United States;

(B) undermine existing and effective efforts to meet the policy objectives outline in section 1241; and

(C) compromise sensitive intelligence operations, with resulting grave damage to the national security of the United States.

(d) **EXCLUDED INFORMATION.**—If the President, consistent with subsection (c)(2), decides not to list any company or countries in that part of the report required under paragraphs (3) and (5) of subsection (b) which would have been listed otherwise, the President shall include that fact in that report, and his reasons therefor.

SEC. 1244. REVIEW BY THE SECRETARY OF STATE OF CERTAIN LICENSE APPLICATIONS.

Section 6(a)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(a)(5)) is amended by adding at the end thereof the following: "The Secretary shall refer all license applications for the export of missile equipment and technology that is not contained on the United States Munitions List to the Secretary of State for review by the Secretary of State, in consultation with the Secretary of Defense."

SEC. 1245. DEFINITIONS.

For purposes of this part:

(1) The term "United States person" means "United States person" as defined in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2)).

(2) The term "foreign person" means any person other than a United States person.

(3) The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and includes the singular and plural of such natural persons and entities, and any successors of such entities.

(4) In the case of Communist-bloc countries, where it may be impossible to identify a specific governmental entity, "person" shall mean all activities of that government relating to the development or production of any technology affected by the Missile Technology Control Regime, plus all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment.

(5) The term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(6) The term "MTCR item" means any item listed in the Equipment and Technology Annex of the Missile Technology Control Regime which was adopted by the governments of Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom, and the United States on April 7, 1987, and in accordance with which the United States Government agreed to act beginning on April 16, 1987.

SEC. 1246. REGULATORY AUTHORITY.

The President may issue such regulations, licenses, and orders as are necessary to carry out this part.

The **CHAIRMAN** pro tempore. Under the rule, the gentleman from California [Mr. BERMAN] will be recognized for 5 minutes in support of the amendment and a Member in opposition will be recognized for 5 minutes.

The Chair recognizes the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I ask unanimous consent that the amendment be modified.

The **CHAIRMAN**. The clerk will report the amendment, as modified.

The Clerk read as follows:

Amendment, as modified, offered by Mr. BERMAN: Page 250, after line 21, insert the following new part (and redesignate the succeeding part and sections accordingly):

PART E—MISSILE TECHNOLOGY CONTROL REGIME

SEC. 1241. POLICY.

(a) **IN GENERAL.**—It should be the policy of the United States to take all appropriate measures—

(1) to discourage the proliferation, development, and production of the weapons, material, and technology necessary and intended to produce or acquire missiles that can deliver weapons of mass destruction;

(2) to discourage Communist-bloc countries from aiding and abetting any states from acquiring such weapons, material and technology;

(3) to strengthen the Missile Technology Control Regime and other aspects of the United States control regime to prohibit the flow of United States materials, equipment, and technology that would assist countries in acquiring the ability to produce or acquire missiles that can deliver weapons of mass destruction, including missiles, warheads and weaponization technology, targeting technology, test and evaluation technology, and range and weapons effect measurement technology;

(4) to discourage private companies in non-Communist countries from aiding and abetting any states in acquiring such material and technology; and

(5) to monitor closely the development, sale, acquisition, and deployment of missiles, destabilizing offensive aircraft, and other weapons delivery systems which can be used to deliver weapons of mass destruction, and to make every effort to discourage such activity when such delivery systems seem likely to be used for such purposes.

(b) **MULTILATERAL DIPLOMACY.**—The United States should seek to pursue the policy described in subsection (a) to the extent practicable and effective through multilateral diplomacy.

(c) **UNILATERAL ACTIONS.**—The United States retains the right to and should take unilateral actions to pursue the objectives in subsection (a) until such multilateral efforts prove effective and, at that time, to support and enhance the multilateral efforts.

SEC. 1242. ENFORCEMENT OF MISSILE TECHNOLOGY CONTROL REGIME.

(a) **DETERMINATION BY THE PRESIDENT.**—Subject to subsection (c), the President shall impose not less than one of the applicable sanctions described in subsection (b) whenever there is reliable evidence, as determined by the President, of any of the following:

(1) That a United States person—

(A) is exporting, transferring, or otherwise engaged in the trade of any MTCR item in violation of the provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) or section 5 or 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404 or 2405), or any regulations issued under any such provisions.

(B) is conspiring to or attempting to engage in such export, transfer, or trade, or

(C) is knowingly facilitating such export, transfer, or trade by any other person.

(2) That a foreign person—

(A) is exporting, transferring, or otherwise engaged in the trade of any MTCR item for which an export license would be denied if such export, transfer, or trade were subject

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to those provisions of law and regulations referred to in paragraph (1)(A).

(B) is conspiring to or attempting to engage in such export, transfer, or trade, or

(C) is knowingly facilitating such export, transfer, or trade by any other person.

(3) That a developing country—

(A) is importing MTCR items or long-range missile systems for the delivery of weapons of mass destruction, or

(B) is equipping its forces with new or additional missile systems or other weapons delivery systems configured to use weapons of mass destruction.

(b) SANCTIONS.—

(1) The sanctions which apply to a United States person under subsection (a) are the following:

(A) Denying such United States person all export licenses under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and sections 5 and 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404 and 2405).

(B) Prohibiting all contracting with, or procurement of any products and services from, such United States person by any department, agency, or instrumentality of the United States Government.

(C) In a case in which the President determines that the violation and is nondestabilizing, the sanctions described in subparagraphs (A) and (B), but only with respect to MTCR items.

(2) The sanctions which apply to a foreign person under subsection (a) are the following:

(A) Denying the issuance of any export license under section 38 of the Arms Export Control Act (22 U.S.C. 2778) or section 5 or section 6 of the Export Administration Act of 1979 (50 U.S.C. App. 2404, 2405) if such foreign person is the designated consignee or end-user in the application for such export license or if the President has reason to believe that such foreign person will benefit from the issuance of such export license.

(B) Prohibiting all contracting with, or procurement of any products and services from, such foreign person by any department, agency, or instrumentality of the United States Government.

(C) In a case in which the President determines that the violation under subsection (a) is an initial violation and is nondestabilizing, the sanctions described in subparagraphs (A) and (B), but only with respect to MTCR items.

(3) The sanctions which apply to a developing country under subsection (a) are the following:

(A) Denying or reducing all technical assistance in aviation, electronics, missiles, or space systems or equipment under the control of the United States Government.

(B) Denying transfer of all or selected technology in aviation, electronics, missiles, or space systems or equipment under the control of the United States Government.

(4) Sanctions under this section shall be imposed for a period of not less than two years and not more than five years.

(c) WAIVER.—The President may waive the imposition of sanctions on a person under subsection (a) with respect to a product or service if the President submits to Congress a certification that—

(1) the product or service is essential to the national security of the United States;

(2) such person is a sole source supplier of the product or service, the product or service is not available from any alternative reliable supplier, and the need for the product or service cannot be met in a timely manner by improved manufacturing processes or technological developments; and

(3) the end-user of such product or service is the United States Government.

(d) INAPPLICABILITY TO FOREIGN PERSONS LICENSED BY AN MTCR COUNTRY.—If a foreign person has been issued an export license by the government of an MTCR country under any provision of law of such country similar to a provision of law or regulations referred to in subsection (a)(1)(A) and such foreign person is a national of such country or, in the case of a business entity, is established pursuant to the laws of such country, subsection (a) does not apply with respect to any exporting, transferring, or other trading activity covered by such export license.

SEC. 1243. SEMI-ANNUAL REPORTS ON THE PROLIFERATION OF LONG-RANGE MISSILE AND DESTABILIZING OFFENSIVE AIRCRAFT.

(a) REPORTS.—Not later than 90 days after the date of the enactment of this Act, and every 180 days thereafter, the President shall submit to Congress a report described in subsection (b).

(b) CONTENTS OF REPORT.—(1) Each report under subsection (a) shall describe in detail the efforts of all foreign countries to acquire long-range missiles and destabilizing offensive aircraft and to acquire the material and technology to produce and deliver such weapons and shall include an assessment of the present and future capability of those countries to produce and deliver such weapons.

(2) Each report under subsection (a) shall include an assessment of whether and to what degree any Communist-bloc country had aided or abetted any foreign country in its efforts to acquire weapons systems, materials, and technology described under paragraph (1).

(3) Each such report shall also list—

(A) each company which in the past has aided or abetted any foreign country in those efforts; and

(B) each company which continues to aid and abet any foreign country in those efforts, as of the date of the report.

(4) Each such report shall also include an assessment as to whether any company listed under paragraph (3)(A) or (3)(B) aware that the assistance provided was for the purpose of developing a long-range missile or offensive aircraft.

(5) Each such report shall also provide any confirmed or credible intelligence or other information that any non-Communist country has aided or abetted any foreign country in those efforts, either directly or by selling such missiles or aircraft or by facilitating the activities of the companies listed under paragraph (3)(A) or (3)(B), but took no action to halt or discourage such activities.

(c) INTERPRETATION OF SECTION.—Nothing in this section—

(1) requires the disclosure of information in violation of Senate Resolution 400 of the Ninety-fourth Congress or otherwise alters, modifies, or supersedes any authority contained in that resolution; or

(2) shall be construed as requiring the President to disclose any information which, in his judgment, would seriously—

(A) jeopardize the national security of the United States;

(B) undermine existing and effective efforts to meet the policy objectives outline in section 1241; and

(C) compromise sensitive intelligence operations, with resulting grave damage to the national security of the United States.

(d) EXCLUDED INFORMATION.—If the President, consistent with subsection (c)(2), decides not to list any company or countries in that part of the report required under paragraphs (3) and (5) of subsection (b) which would have been listed otherwise, the Presi-

dent shall include that fact in that report, and his reasons therefor.

SEC. 1244. REVIEW BY THE SECRETARY OF STATE OF CERTAIN LICENSE APPLICATIONS.

Section 6(a)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(a)(5)) is amended by adding at the end thereof the following: "The Secretary shall refer all license applications for the export of missile equipment and technology that are not contained on the United States Munitions List to the Secretary of State for review by the Secretary of State, in consultation with the Secretary of Defense."

SEC. 1245. DEFINITIONS.

For purposes of this part:

(1) The term "United States person" has the meaning given that term in section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. 2415(2)).

(2) The term "foreign person" means any person other than a United States person.

(3)(A) The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, and any successor of any such entity.

(B) In the case of Communist-bloc countries (where it may be impossible to identify a specific governmental entity) the term "person" means—

(i) all activities of that government relating to the development or production of any technology affected by the Missile Technology Control Regime; and

(ii) all activities of that government affecting the development or production of aircraft, electronics, and space systems or equipment.

(4) The term "otherwise engaged in the trade of" means, with respect to a particular export or transfer, to be a freight forwarder or designated exporting agent, or a consignee or end user of the item to be exported or transferred.

(5) The term "MTCR item" means any item listed in the Equipment and Technology Annex of the Missile Technology Control Regime which was adopted by the governments of Canada, France, the Federal Republic of Germany, Italy, Japan, the United Kingdom, and the United States on April 7, 1987, and in accordance with which the United States Government agreed to act beginning on April 16, 1987.

(6) The term "developing country" means a country that is listed as a country with a low-income economy or a middle-income economy on pages 164 and 165 of the report of the World Bank entitled "World Development Report 1989", published by Oxford University Press.

SEC. 1246. REGULATORY AUTHORITY.

The President may issue such regulations, licenses, and orders as are necessary to carry out this part.

SEC. 1247. EFFECTIVE DATE.

Section 1242(a) shall take effect at the end of the six-month period beginning on the date of the enactment of this Act.

Mr. BERMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment, as modified, be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN pro tempore. Is there objection to the initial request of the gentleman from California [Mr.